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General Assembly
Security Council

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General Assembly
Tenth emergency special session
Agenda item 5
Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Security Council
Sixty-sixth year

Identical letters dated 20 July 2011 from the Chargé d'affaires a.i. of the Permanent Observer Mission of Palestine to the United Nations addressed to the Secretary-General and the President of the Security Council

In follow-up to my letter dated 19 July 2011, regarding the intensification of illegal Israeli practices in the Occupied Palestinian Territory, including East Jerusalem, I am compelled to draw your attention to the critical situation of Palestinian prisoners being held by Israel, the occupying Power.

The plight of Palestinian prisoners continues to deteriorate due to escalating violations, most notably following the recent declaration by the Israeli Prime Minister of plans to further "toughen" their conditions, in grave violation of international humanitarian and human rights law. It must be recalled that more than 6,000 Palestinian civilians, including at least 245 children and 37 women, as well as 19 elected officials, continue to be imprisoned or arbitrarily detained by Israel. The majority of Palestinian families continue to be affected by the occupying Power's imprisonment of their family members, particularly men who represent the head of their households, and the attendant social, economic and psychological consequences are vast and continue to cause great suffering and hardship to these families.

The overwhelming majority of the Palestinian prisoners and detainees continue to suffer from deplorable and inhumane conditions and treatment in violation of their most basic human rights and the relevant provisions of international humanitarian law. It is a well known fact that Palestinians being held in Israeli prisons and detention centres are routinely subjected to psychological and physical maltreatment, harassment and intimidation, unsanitary and unhygienic conditions, inadequate health care, forced interrogations, denial of due process, restrictions of family visits, solitary confinement, and, in many cases, torture. Moreover, in direct contravention of the Fourth Geneva Convention, thousands of Palestinian prisoners and detainees have been transferred by Israel, the occupying Power, outside of the

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Occupied Palestinian Territory, including East Jerusalem, to prison facilities inside Israel.

In this regard, I must draw your immediate attention in particular to the dire health conditions of three Palestinian prisoners, Yousef Skafi, Atef Wreidat and Maisara Abu Hamdiyye, who have been on a hunger strike for more than 30 days, since 12 June 2011, in the Israeli prison of Asqalan as a result of the occupying forces' rejection of their humanitarian requests to be moved to another prison so that they may receive proper health care for the conditions from which they are suffering, including diabetes, hypertension and heart and kidney problems. These prisoners have also been subjected to a ban on family visits and monetary fines. Today, Skafi and Wreidat were transferred to the Al-Ramleh prison hospital due to health deterioration that threatens their lives. They remain in critical condition, and a medical examination has revealed that Skafi's body is beginning to rot. In this connection, we believe it must be noted that Skafi's 11-year-old daughter, Abeer, died two months ago after suffering a severe nervous breakdown and coma following the obstruction of her visit to her father in prison. We urge the international community to give the necessary attention to this grave issue.

It must be underscored that Israel has not for one moment ceased its military arrest campaign throughout the Occupied Palestinian Territory, including East Jerusalem, with arrests and detentions being carried out on a near daily basis. In addition to continuously adding to the ranks of imprisoned and detained Palestinian civilians, these arrests are often carried out in the context of violent military raids that cause death and injury to civilians, including children, damage to homes and properties, and cause widespread fear among the Palestinian population. Moreover, the Israeli occupying forces continue to use Palestinian civilians as human shields during these arrest raids.

In recent days, the Israeli occupying forces arrested 11 Palestinian youths in the Silwan neighbourhood of East Jerusalem. In this connection, we are compelled to highlight the extremely troubling situation of Palestinian children who continue to be arrested and detained by Israel, the occupying Power. A recent report by the Israeli human rights organization B'Tselem, entitled "No Minor Matter", reveals extensive Israeli violations of the rights of Palestinian children accused of stone throwing and their physical and psychological mistreatment during arrest.

In this regard, the report found that the children are often arrested by the Israeli occupying forces in the middle of the night, violently seized from their homes and taken alone to interrogations, without being able to consult an attorney or even their parents. Moreover, it was found that the occupying forces typically coerce the children to plead guilty to supposedly avoid a lengthy pre-trial detention, with the children subsequently actually sentenced to prison terms. Out of the hundreds upon hundreds of Palestinian children arrested (aged 17 or younger) for stone throwing between 2005 and 2010, only one was acquitted and the rest all sentenced to prison. We urgently call on the international community to compel Israel to release all Palestinian children detained and imprisoned and to accord all Palestinian prisoners their full rights under international law.

The grave situation of Palestinian civilians in Israeli jails and detention centres remains an issue of great concern and of priority for the Palestinian people and their leadership. Illegal Israeli actions in this regard and the poor health conditions of several prisoners in particular warrant serious attention by the international

community. The occupying Power must be held to the same standard of international law to which all countries are held and it must therefore be demanded that Israel comply with all of its legal obligations under international humanitarian and human rights law vis-à-vis the Palestinian prisoners it continues to imprison and detain.

This letter is in follow-up to our previous 395 letters regarding the ongoing crisis in the Occupied Palestinian Territory, including East Jerusalem, since 28 September 2000. These letters, dated from 29 September 2000 (A/55/432-S/2000/921) to 19 July 2011 (A/ES-10/524-S/2011/439) constitute a basic record of the crimes being committed by Israel, the occupying Power, against the Palestinian people since September 2000. For all of these war crimes, acts of State terrorism and systematic human rights violations committed against the Palestinian people, Israel, the occupying Power, must be held accountable and the perpetrators must be brought to justice.

I should be grateful if you would arrange to have the text of the present letter distributed as a document of the tenth emergency special session of the General Assembly, under agenda item 5, and of the Security Council.

(*Signed*) Feda **Abdelhady-Nasser**
Chargé d'affaires a.i.

United Nations S/2011/446

Security Council

Distr.: General
21 July 2011

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Letter dated 18 July 2011 from the Permanent Representative of Cambodia to the United Nations addressed to the President of the Security Council

Upon instructions from my Government, I have the honour to forward herewith the Summary of the Order of 18 July 2011 of the International Court of Justice regarding Cambodia's request for the indication of provisional measures pending the Court's ruling on the request for interpretation of the Judgment of 15 June 1962 in the case concerning the Temple of Preah Vihear (see annex).

I would be grateful if the present letter and the attached Summary of the Order of the International Court of Justice could be circulated as a document of the Security Council.

(*Signed*) Kosal **Sea**
Ambassador
Permanent Representative of the Kingdom of Cambodia
to the United Nations

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Annex to the letter dated 18 July 2011 from the Permanent Representative of Cambodia to the United Nations addressed to the President of the Security Council*

Request for interpretation of the Judgment of 15 June 1962 in the case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)

Request for the indication of provisional measures

Summary of the Order of 18 July 2011

I. **Application and request for the indication of provisional measures** (paras 1 to 18 of the Order)

Application instituting proceedings (paras 1 to 5)

The Court begins by recalling that, in its Application, Cambodia invokes the first paragraph of the operative clause of the 1962 Judgment, in which the Court declared that "the Temple of Preah Vihear [was] situated in territory under the sovereignty of Cambodia". The Court notes Cambodia's argument whereby it "could not have reached such a conclusion if it had not first recognized that a legally established frontier existed between the two Parties in the area in question". It also recalls that the Applicant implies that, in the reasoning of the 1962 Judgment, the Court considered that the two Parties had, by their conduct, recognized the line on the map in Annex I to Cambodia's Memorial (hereinafter the "Annex I map"), a map drawn up in 1907 by the Franco-Siamese Mixed Commission, as representing the frontier between Cambodia and the Kingdom of Thailand (hereinafter "Thailand") in the area of the Temple of Preah Vihear. It also observes that Cambodia invokes the jurisprudence of the Court whereby, "while in principle any request for interpretation must relate to the operative part of the judgment, it can also relate to those reasons for the judgment which are inseparable from the operative part".

The Court then recalls that, in its Application, the applicant State invokes the second paragraph of the operative clause of the 1962 Judgment, in which the Court declared that "Thailand [was] under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory". The Court further observes that, according to the Applicant, this obligation derives from the fact that the Temple of Preah Vihear and its vicinity are situated in territory under Cambodian sovereignty, as recognized by the Court in the first paragraph of the operative clause, and "goes beyond a withdrawal from only the precincts of the Temple itself and extends to the area of the Temple in general". It notes that, according to Cambodia, "the setting forth of this obligation in the operative clause of the Judgment indicates that it must be understood as a general and continuing obligation incumbent upon Thailand not to advance into Cambodian territory".

* The annex is being issued in the language of submission only.

The Court also observes that, according to Cambodia, its jurisdiction to entertain a request for interpretation of one of its judgments is based directly on Article 60 of the Statute, which stipulates that "[i]n the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party" and that, "at the end of its Application, Cambodia presents the following request:

> "Given that 'the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia' (first paragraph of the operative clause), which is the legal consequence of the fact that the Temple is situated on the Cambodian side of the frontier, as that frontier was recognized by the Court in its Judgment, and on the basis of the facts and legal arguments set forth above, Cambodia respectfully asks the Court to adjudge and declare that:
>
> The obligation incumbent upon Thailand to 'withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory' (second paragraph of the operative clause) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the area of the Temple and its vicinity by the line on the Annex I map, on which the Judgment of the Court is based."

Request for the indication of provisional measures

The Court goes on to recall that, "on 28 April 2011, having filed its Application, Cambodia, referring to Article 41 of the Statute and Article 73 of the Rules of Court, also submitted a request for the indication of provisional measures in order to 'cause [the] incursions onto its territory [by Thailand] to cease' pending the Court's ruling on the Request for interpretation of the 1962 Judgment" and that, "in its request for the indication of provisional measures, Cambodia refers to the basis for the Court's jurisdiction invoked in its Application"

The Court notes the allegations put forward by Cambodia whereby, "since 22 April 2011, serious armed incidents have occurred in the area of the Temple of Preah Vihear and at several locations situated along the boundary between Cambodia and Thailand". The Court also notes that, according to Cambodia, "Thailand is responsible for those incidents" The Court observes that, according to the Applicant, "those incidents have caused fatalities, injuries and the evacuation of local inhabitants". The Court further notes that "in its request, Cambodia asserts that if that request were to be rejected, and if Thailand persisted in its conduct, the damage caused to the Temple of Preah Vihear, as well as the loss of life and human suffering as a result of those armed clashes, would become worse" The Court states that, according to Cambodia, "[m]easures are urgently required, both to safeguard [its] rights pending the Court's decision — rights relating to its sovereignty, its territorial integrity and to the duty of non-interference incumbent upon Thailand — and to avoid aggravation of the dispute"

The Court recalls that "at the end of its request for the indication of provisional measures, Cambodia asks [it] to indicate the following provisional measures pending the delivery of its judgment on the Request for interpretation: (i) "an immediate and unconditional withdrawal of all Thai forces from those parts of Cambodian territory situated in the area of the Temple of Preah Vihear; (ii) "a ban on all military activity by Thailand in the area of the Temple of Preah Vihear"; and (iii) "that Thailand refrain from any act or action which could interfere with the rights of Cambodia or aggravate the dispute in the principal proceedings". It states that the Applicant also asks it, "on account of the gravity of the situation, to consider its request for the indication of provisional measures as a matter of urgency".

The Court then gives a brief outline of the history of the proceedings (paras 12 to 17)

The Court notes that, at the end of its second round of oral observations, the Kingdom of Thailand asked it "to remove the case introduced by the Kingdom of Cambodia on 28 April 2011 from the General List".

2. Dispute as to the meaning or scope of the 1962 Judgment and jurisdiction of the Court (paras. 19 to 32)

The Court first observes that, when it receives a request for the indication of provisional measures in the context of proceedings for interpretation of a judgment under Article 60 of the Statute, it has to consider whether the conditions laid down by that Article for the Court to entertain a request for interpretation appear to be satisfied.

The Court recalls that Article 60 reads as follows: "The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party", and that this provision is supplemented by Article 98 of the Rules of Court, paragraph 1 of which states: "In the event of dispute as to the meaning or scope of a judgment any party may make a request for its interpretation ".

The Court notes, in paragraph 21 of its Order, that "[its] jurisdiction on the basis of Article 60 of the Statute is not preconditioned by the existence of any other basis of jurisdiction as between the parties to the original case" and that "it follows that, even if the basis of jurisdiction in the original case lapses, the Court, nevertheless, by virtue of Article 60 of the Statute, may entertain a request for interpretation provided that there is a 'dispute as to the meaning or scope' of any judgment rendered by it". The Court nevertheless states that it "may indicate provisional measures in the context of proceedings for interpretation of a judgment only if it is satisfied that there appears prima facie to exist a 'dispute' within the meaning of Article 60 of the Statute". It adds that "at this stage, it need not satisfy itself in a definitive manner that such a dispute exists".

The Court recalls that a dispute within the meaning of Article 60 of the Statute must be understood as a difference of opinion or views between the parties as to the meaning or scope of a judgment rendered by the Court, and that the existence of such a dispute does not require the same criteria to be fulfilled as those determining the existence of a dispute under Article 36, paragraph 2, of the Statute.

Having pointed out that "it is established that a dispute within the meaning of Article 60 of the Statute must relate to the operative clause of the judgment in question and cannot concern the reasons for the judgment except in so far as these are inseparable from the operative clause", the Court states that it must now "ascertain whether a dispute appears to exist between the Parties in the present case, within the meaning of Article 60 of the Statute". It recalls the positions adopted by the Parties (paragraphs 25 to 30 of the Order) and concludes that, in the light of those positions, "a difference of opinion or views appears to exist between them as to the meaning or scope of the 1962 Judgment". The Court declares that this difference appears to relate, (i) "in the first place, to the meaning and scope of the phrase 'vicinity on Cambodian territory' used in the second paragraph of the operative clause of the Judgment"; (ii) "next, to the nature of the obligation imposed on Thailand, in the second paragraph of the operative clause of the Judgment, to 'withdraw any military or police forces, or other guards or keepers', and, in particular, to the question of whether this obligation is of a continuing or an instantaneous character"; and (iii) "finally, to the question of whether the Judgment did or did not recognize with binding force the line shown on the Annex I map as representing the frontier between the two Parties". The Court recalls that "the Permanent Court of International Justice previously had occasion to state that a difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of Article 60 of the Statute".

Having concluded that "a dispute thus appears to exist between the Parties as to the meaning or scope of the 1962 Judgment, and [that it] therefore appears that the Court may, pursuant to Article 60 of the Statute, entertain the request for interpretation of the said Judgment submitted by Cambodia", the Court considers, "in consequence, [that it] cannot accede to the request by Thailand that the case be removed from the General List" and that "there is a sufficient basis for [it] to be able to indicate the provisional measures requested by Cambodia, if the necessary conditions are fulfilled"

The Court then considers the conditions required for the indication of provisional measures (paras. 33 to 56)

3. Plausible character of the alleged rights in the principal request and link between these rights and the measures requested (paras. 33 to 45)

Having noted that "[its] power to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights of the parties pending the decision of the Court" and that "it follows that [it] must be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court to belong to either party", the Court indicates, first, that it "may exercise this power only if it is satisfied that the rights asserted by a party are at least plausible" and, secondly, that "in proceedings under Article 60 of the Statute, this supposes that the rights which the party requesting provisional measures claims to derive from the judgment in question, in the light of its interpretation of that judgment, are at least plausible". The Court observes moreover that "a link must be established between the alleged rights and the provisional measures sought to protect them" and that, "in proceedings under Article 60 of the Statute, this supposes that there is a link between the provisional measures requested by a party and the rights which it claims to derive from the judgment in question, in the light of the interpretation it gives to that judgment"

Plausible character of the alleged rights in the principal request (paras. 35 to 41)

Having briefly recalled the positions of the Parties on the plausible character of the alleged rights in the principal request (paras. 35 and 36), the Court considers that "it should, at the outset, be made clear that Article 60 of the Statute does not impose any time-limit on requests for interpretation". It underlines that it "may entertain a request for interpretation in so far as there exists a dispute as to the meaning or scope of a judgment", and that "such a dispute can, in itself, certainly arise from facts subsequent to the delivery of that judgment". The Court considers that "at this stage in the proceedings, [it] does not have to rule definitively on the interpretation put forward by Cambodia of the 1962 Judgment and on the rights it claims to derive therefrom". It adds that "for the purposes of considering the request for the indication of provisional measures, [it] need only determine whether those rights are at least plausible"

The Court then recalls that, "in the operative clause of its 1962 Judgment, [it] declared in particular that the Temple of Preah Vihear was situated in territory under the sovereignty of Cambodia, and that Thailand was under an obligation to withdraw any military forces stationed at the Temple or in its vicinity on Cambodian territory". It notes that "the interpretation of the 1962 Judgment put forward by Cambodia in order to assert its rights — namely, the right to respect for its sovereignty in the area of the Temple of Preah Vihear and its right to territorial integrity — is that the Court was only able to reach these conclusions once it had recognized the existence of a frontier between the two States and found that the Temple and its 'vicinity' were on the Cambodian side of that frontier". Cambodia claims that the phrase "vicinity on Cambodian territory" includes the area surrounding the precincts of the Temple and that consequently "Thailand has a continuing obligation not to infringe Cambodia's sovereignty over that area"

The Court concludes that "the rights claimed by Cambodia, in so far as they are based on the 1962 Judgment as interpreted by Cambodia, are plausible", and it states that while "this conclusion does not prejudge the outcome of the main proceedings , it is nonetheless sufficient for the purposes of considering the present request for the indication of provisional measures"

Link between the alleged rights and the measures requested (paras 42 to 45)

Having briefly recalled the positions of the Parties on this point (paras 42 to 43), the Court recalls that "in proceedings on interpretation, [it] is called upon to clarify the meaning and the scope of what the Court decided with binding force in a judgment". It observes that "Cambodia is seeking clarification of the meaning and the scope of what the Court decided with binding force in the 1962 Judgment in the case concerning the Temple of Preah Vihear (Cambodia v Thailand)", and requests it "to specify the meaning and scope of the operative clause of that Judgment in respect of the extent of its sovereignty in the area of the Temple (see paragraph 5 [of the Order])" In its Request for the indication of provisional measures (see paragraph 11 [of the Order]), Cambodia, pending the Court's final decision, "is precisely seeking the protection of the rights to sovereignty over this area which it claims to derive from the operative clause of the 1962 Judgment" The Court concludes that "the provisional measures sought thus aim to protect the rights that Cambodia invokes in its request for interpretation" and that "the necessary link between the alleged rights and the measures requested is therefore established"

4. Risk of irreparable prejudice; urgency (paras 46 to 68)

The Court first of all recalls that, pursuant to Article 41 of its Statute, it has "the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of the judicial proceedings" and that its power to indicate provisional measures "will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice may be caused to the rights in dispute before [it] has given its final decision" It must therefore "consider whether, in these proceedings, such a risk exists"

The Court then recalls the facts as reported by the Parties to the proceedings (paras 48 to 52)

The Court observes (para 53) that "at this stage in the proceedings, [it] is only required to consider whether the circumstances brought to its attention call for the indication of provisional measures" In this case, it notes "that it is apparent from the case file that incidents have occurred on various occasions between the Parties in the area of the Temple of Preah Vihear" Thus it observes that, "since 15 July 2008, armed clashes have taken place and have continued to take place in that area, in particular between 4 and 7 February 2011, leading to fatalities, injuries and the displacement of local inhabitants", and that "damage has been caused to the Temple and to the property associated with it". It notes that, "on 14 February 2011, the Security Council called for a permanent ceasefire to be established between the two Parties and expressed its support for [the Association of Southeast Asian Nations (hereinafter 'ASEAN')] in seeking a solution to the conflict", and that "the Chair of ASEAN therefore proposed to the Parties that observers be deployed along their boundary, but whereas this proposal was not put into effect, however, because the Parties failed to agree on how it should be implemented" The Court adds that "in spite of these attempts to settle the dispute peacefully, there was a further exchange of fire between the Parties on 26 April 2011 in the area of the Temple"

The Court observes (para 54) that "the existence of a ceasefire 'does not , deprive [it] of the rights and duties pertaining to it in the case brought before it'" and that "it is therefore not obliged to establish, at this stage in the proceedings, whether the oral ceasefire negotiated between the Parties' military commanders on 28 April 2011 did or did not cover the area of the Temple of

Preah Vihear". It further considers that "the rights which Cambodia claims to hold under the terms of the 1962 Judgment in the area of the Temple might suffer irreparable prejudice resulting from the military activities in that area and, in particular, from the loss of life, bodily injuries and damage caused to the Temple and the property associated with it". Having observed that "there are competing claims over the territory surrounding the Temple" and that "the situation in the area of the Temple of Preah Vihear remains unstable and could deteriorate", the Court considers that "because of the persistent tensions and absence of a settlement to the conflict, there is a real and imminent risk of irreparable prejudice being caused to the rights claimed by Cambodia". It therefore concludes that there is urgency in this case.

The Court concludes, first, that it can indicate provisional measures, as provided for in Article 41 of its Statute, and that the circumstances of the present case require it to do so. It then notes that it has the power under its Statute "to indicate measures that are in whole or in part other than those requested, or measures that are addressed to the party which has itself made the request, as Article 75, paragraph 2, of the Rules of Court expressly states". It recalls that "it has already exercised this power on several occasions", and states that, when it is indicating provisional measures for the purpose of preserving specific rights, it also has, "independently of the parties' requests, the power to indicate provisional measures with a view to preventing the aggravation or extension of the dispute whenever it considers that the circumstances so require".

Having considered the terms of the provisional measures requested by Cambodia, the Court "does not find, in the circumstances of the case, that the measures to be indicated must be the same as or limited to those sought by [that State]". Having analysed the material before it, "[it] deems it appropriate to indicate measures addressed to both Parties".

The Court underlines that "the area of the Temple of Preah Vihear has been the scene of armed clashes between the Parties and [that it] has already found that such clashes may reoccur". It considers that it is for the Court (para. 61) "to ensure, in the context of these proceedings, that no irreparable damage is caused to persons or property in that area pending the delivery of its Judgment on the request for interpretation". It concludes that "in order to prevent irreparable damage from occurring, all armed forces should be provisionally excluded from a zone around the area of the Temple, without prejudice to the judgment which [it] will render on the request for interpretation submitted by Cambodia".

The Court continues by stating that it "considers it necessary, in order to protect the rights which are at issue in these proceedings, to define a zone which shall be kept provisionally free of all military personnel, without prejudice to normal administration, including the presence of non-military personnel necessary to ensure the security of persons and property". It then defines that provisional demilitarized zone (see para. 62 and the sketch-map appended to the Order and annexed to this summary) and states that "both Parties, in order to comply with this Order, shall withdraw all military personnel currently present in the zone as thus defined [and that] both Parties shall refrain not only from any military presence within that provisional demilitarized zone, but also from any armed activity directed at the said zone" (para. 63).

The Court further states (para. 64) that "both Parties shall continue the co-operation which they have entered into within ASEAN and, in particular, allow the observers appointed by that organization to have access to the provisional demilitarized zone".

The Court states (para. 65) that it is not disputed that the Temple of Preah Vihear itself belongs to Cambodia, that "Cambodia must, in all circumstances, have free access to the Temple and must be able to provide fresh supplies to its non-military personnel"; Thailand must therefore "take all necessary measures in order not to obstruct such free and uninterrupted access".

The Court then reminds the Parties, (i) that "the Charter of the United Nations imposes an obligation on all Member States of the United Nations to refrain in their international relations

from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations"; (ii) that "United Nations Member States are also obliged to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered"; and (iii) that "both Parties are obliged, by the Charter and general international law, to respect these fundamental principles of international law"

Finally, the Court underlines that its orders "on provisional measures under Article 41 [of its Statute] have binding effect" and that they therefore create "international legal obligations with which both Parties are required to comply" It adds that the decision given in the present proceedings on the request for the indication of provisional measures "in no way prejudges any question that the Court may have to deal with relating to the Request for interpretation"

Operative part (para 69)

The full text of the last paragraph of the Order reads as follows:

"For these reasons,

THE COURT,

(A) Unanimously,

Rejects the Kingdom of Thailand's request to remove the case introduced by the Kingdom of Cambodia on 28 April 2011 from the General List of the Court;

(B) Indicates the following provisional measures:

(1) By eleven votes to five,

Both Parties shall immediately withdraw their military personnel currently present in the provisional demilitarized zone, as defined in paragraph 62 of the present Order, and refrain from any military presence within that zone and from any armed activity directed at that zone;

IN FAVOUR: Vice-President Tomka; Judges Koroma, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood; Judge ad hoc Guillaume;

AGAINST: President Owada; Judges Al-Khasawneh, Xue, Donoghue; Judge ad hoc Cot;

(2) By fifteen votes to one,

Thailand shall not obstruct Cambodia's free access to the Temple of Preah Vihear or Cambodia's provision of fresh supplies to its non-military personnel in the Temple;

IN FAVOUR: President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; Judges ad hoc Guillaume, Cot;

AGAINST: Judge Donoghue;

(3) By fifteen votes to one,

Both Parties shall continue the co-operation which they have entered into within ASEAN and, in particular, allow the observers appointed by that organization to have access to the provisional demilitarized zone;

IN FAVOUR: President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; Judges ad hoc Guillaume, Cot;

AGAINST: Judge Donoghue;

(4) By fifteen votes to one,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

IN FAVOUR: President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; Judges ad hoc Guillaume, Cot;

AGAINST: Judge Donoghue;

(C) By fifteen votes to one,

Decides that each Party shall inform the Court as to its compliance with the above provisional measures;

IN FAVOUR: President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; Judges ad hoc Guillaume, Cot;

AGAINST: Judge Donoghue;

(D) By fifteen votes to one,

Decides that, until the Court has rendered its judgment on the request for interpretation, it shall remain seised of the matters which form the subject of this Order

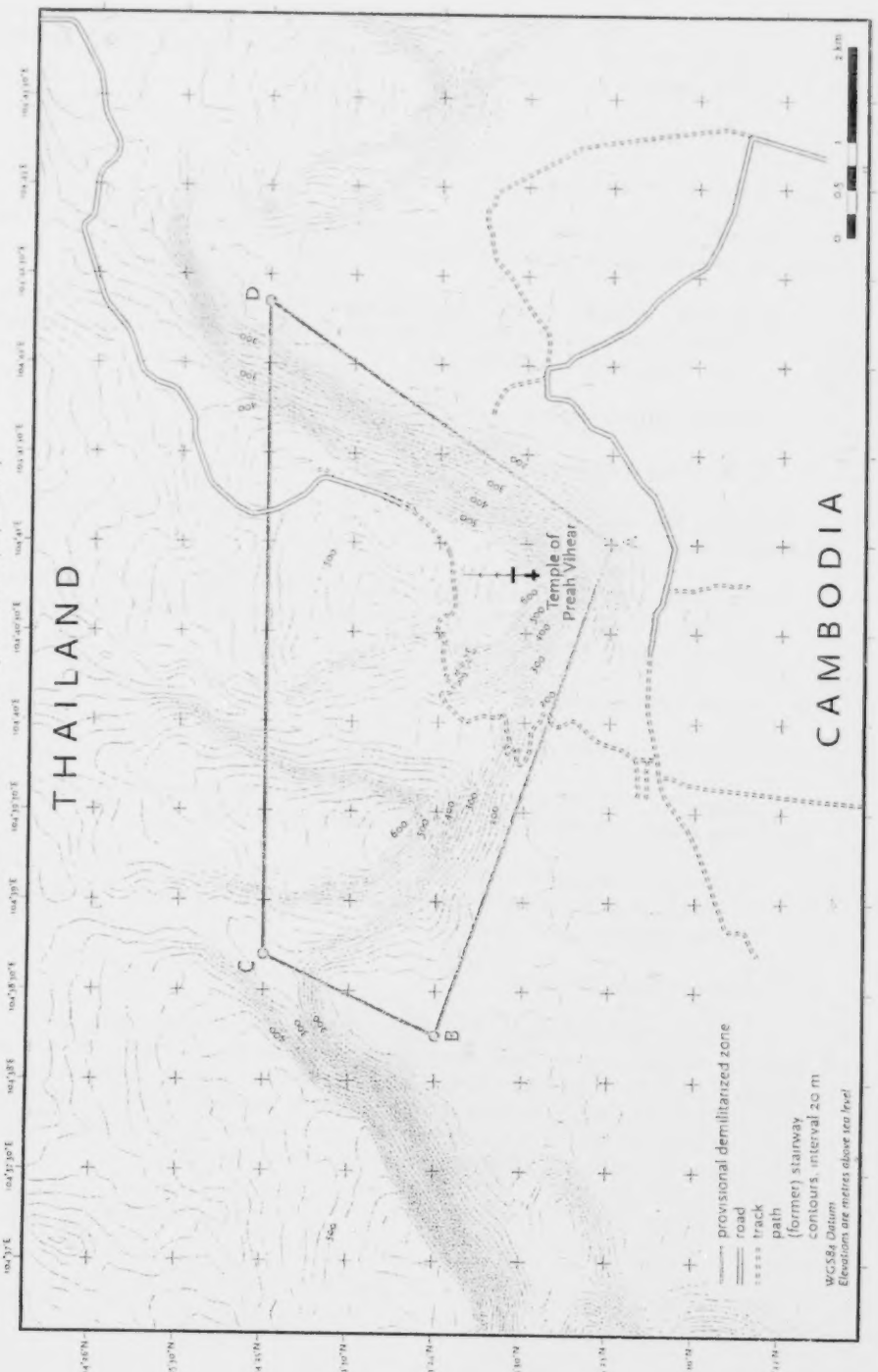
IN FAVOUR: President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; Judges ad hoc Guillaume, Cot;

AGAINST: Judge Donoghue."

President OWADA appends a dissenting opinion to the Order of the Court; Judge KOROMA appends a declaration to the Order of the Court; Judge AL-KHASAWNEH appends a dissenting opinion to the Order of the Court; Judge CANÇADO TRINDADE appends a separate opinion to the Order of the Court; Judges XUE and DONOGHUE append dissenting opinions to the Order of the Court; Judge *ad hoc* GUILLAUME appends a declaration to the Order of the Court; Judge ad hoc COT appends a dissenting opinion to the Order of the Court

SKETCH–MAP OF PROVISIONAL DEMILITARIZED ZONE IDENTIFIED BY THE COURT

This sketch-map has been prepared for illustrative purposes only



Enclosure

Dissenting opinion of President Owada

In his dissenting opinion, President Owada states that while he agrees with the Court's indicating that a provisional demilitarized zone be established for the purpose of military disengagement, he is in disagreement with the Court in its concrete delimitation of the zone.

The Court designated the zone from which all military personnel should be withdrawn, pending the final outcome of the decision of the Court on the merits in the main case, in such a manner so that it extends to a certain portion of the territories of the Parties over which sovereignty is undisputed. In the past, in similar cases where there was a risk of armed conflict in the disputed area, the Court limited the indication of provisional measures to ordering the parties to disengage their forces, in principle, from "the area in dispute". President Owada considers that, however understandable the Court's concern was regarding the potential outbreak of armed conflict over the area around the Temple of Preah Vihear, the Court should not, and indeed cannot, within the competence of the Court in the present case, establish the quadrangular area as designated in the Order as the provisional demilitarized zone. Moreover, in his view, the feasibility of implementing the demilitarized zone by the Parties could in fact be increased, were the Court to set it up as confined to the territory in dispute between the Parties (circa 4.6 sq km), since each of the Parties can easily identify the area on the ground, based on their respectively claimed boundaries.

Declaration of Judge Koroma

In his declaration, Judge Koroma states that he has voted in favour of the Court's Order, but emphasizes that the demilitarized zone established in the Order is a temporary one that in no way prejudges the outcome of the Application before the Court. Rather, according to Judge Koroma, the Order is designed to prevent further armed clashes between the Parties that might prejudice the rights of either Party while the case is pending before the Court.

Judge Koroma states that the Court, when deciding upon the precise nature of the provisional measures it plans to indicate, must take into consideration the existence, nature, and magnitude of an armed conflict between the Parties. According to Judge Koroma, the Court must also assess the risk that further armed conflict will occur while the case is pending. He points out that in other cases involving armed conflict, the Court has indicated provisional measures similar to those indicated in this case in order to preserve the rights of the parties. He adds that, in the present case, the evidence provided to the Court demonstrated that repeated incidents of armed conflict had occurred between the Parties, including shelling from heavy artillery. As a result, Judge Koroma states that the Court decided to create a temporary demilitarized zone of a size adequate to minimize the risk of further armed clashes and shelling.

Judge Koroma concludes that the Court's Order should be seen as an effort to prevent further armed conflict between the two Parties and should not be regarded as a prejudgment of the Application before the Court.

Dissenting opinion of Judge Al-Khasawneh

In his dissenting opinion, Judge Al-Khasawneh explains the reasons for his vote against operative paragraph 69 (B) (1) of the Order. While accepting that, in principle, all the conditions necessary for the indication of provisional measures have been met in the present instance, Judge Al-Khasawneh rejects the Court's decision to establish a "provisional demilitarized zone" and to direct both Parties to withdraw their military personnel from this zone. In his view, this measure is excessive and unnecessary, since the rights that need to be protected from the risk of irreparable prejudice resulting from the military activities in the area of the Temple of Preah Vihear can be adequately and effectively protected by simply directing both Parties to refrain from any military activities in or directed at the area around the Temple. At the same time,

Judge Al-Khasawneh warns that the Court's establishment of the "provisional demilitarized zone" without any discernible criterion is open to accusations of arbitrariness, which the Court could have avoided by limiting the scope of provisional measures to those strictly necessary for protection of rights pending the final judgment

Separate opinion of Judge Cançado Trindade

1 Judge Cançado Trindade begins his Separate Opinion, composed of twelve parts, by pointing out that, given the great importance that he attributes to the matters dealt with by the Court in the present Order, or else underlying it, he feels obliged to leave on the records of this "transcendental case" of the Temple of Preah Vihear (as he perceives it) the foundations of his own personal position on them He does so moved by a sense of duty in the exercise of the international judicial function, even more so as some of the lessons he extracts from the present decision of the Court "are not explicitly developed and stated in the present Order" (part I)

2 This being so, he develops his own reflections pursuant to the following sequence: (a) the passing of time and the chiaroscuro of Law; (b) the density of time; (c) the temporal dimension in International Law; (d) the search for timelessness; (e) from timelessness to timeliness; (f) the passing of time and the chiaroscuro of existence; (g) time, legal interpretation, and the nature of legal obligation; (h) from time to space: territory and people together; (i) the effects of provisional measures of protection in the cas d'espèce (encompassing the protection of people in territory; the prohibition of use or threat of force; and the protection of cultural and spiritual world heritage); (j) provisional measures of protection, beyond the strict territorialist approach; and (k) final considerations sub specie aeternitatis

3 He begins reasoning by dwelling upon "the multifaceted relationship between time and law", an issue which discloses the chiaroscuro of international law as well as, ultimately, of existence itself (part II) He warns that one cannot assume a linear progress in the regulation of relations among States inter se, or among human beings inter se, or among States and human beings The present requests for provisional measures and for interpretation in respect of the Judgment of the ICJ of 15 June 1962 in the case of the Temple of Preah Vihear, bear witness of the element of factual unpredictability of endeavours of peaceful settlement, to guard us against any asumption as to definitive progress achieved in those relations among States or among human beings, or among the former and the latter

4 In this respect, he recalls pertinent parts of the pleadings of fifty years ago before the Court (in the public sittings of March 1962), and then turns to an examination of what he calls the "density of time", likewise brought to the attention of the Court half a century ago (part III) As time does not cease to pass, and keeps on flowing, he singles out the new factual developments (occurred in the years 2000, 2007-2008 and 2011) now lodged with the Court in the two requests pending before it To him, the temporal dimension, in the present case of the Temple of Preah Vihear, can be examined, in his understanding, from distinct angles, which he develops throughout his Separate Opinion

5 To Judge Cançado Trindade, the temporal dimension is clearly inherent to the conception of the "progressive development" of international law. By the same token, the conscious search for new juridical solutions is to presuppose the solid knowledge of solutions of the past and of the evolution of the applicable law as an open and dynamic system, capable of responding to the changing needs of regulation In effect, — he adds, — the temporal dimension underlies the whole domain of Law in general, and of Public International Law in particular Time is inherent to Law,

to its interpretation and application, and to all the situations and human relations regulated by it. He next criticizes the "ineluctable pitfalls" of the static outlook of legal positivism and of "realist" thinking.

6. Judge Cançado Trindade contends that time marks a noticeable presence in the whole domain of international procedural law. As to substantive law, the temporal dimension permeates virtually all domains of Public International Law, such as, e.g., the law of treaties (regulation pro futuro), peaceful settlement of international disputes (settlement pro futuro), State succession, the international law of human rights, international environmental law, among others. In the field of regulation of spaces (e.g., law of the sea, law of outer space), the temporal dimension stands out likewise. There is nowadays greater awareness of the need to fulfill the interests of present and future generations (with a handful of multilateral conventions in force providing for that).

7. The present case, centered on the Temple of Preah Vihear, in the perception of Judge Cançado Trindade appears to resist the onslaught of time and to be endowed with a touch of timelessness. The Temple of Preah Vihear, a monument of Khmer art, dates back to the first half of the XIth century; it was intended to stand for times immemorial, and to fulfill the spiritual needs of the faithful of the region (part V). Temples and shrines, — he adds, — giving expression to different religious faiths, have been erected in times past in distinct localities in all continents, in search of timelessness, to render eternal the human faith, carved in stone to that end.

8. Recent factual developments (2007-2011) in the region show that what was meant to be a monument endowed with timelessness, is now again the object of contention before this Court, raising before it, inter alia, the issue of timeliness (part VI). The case of the Temple of Preah Vihear is now, half a century after its adjudication by the Court on 15 June 1962, brought again to the attention of the Court, by means of two requests from Cambodia, one for interpretation of the 1962 Judgment, and the other for provisional measures of protection. In the first request, for interpretation, the applicant State draws attention to its timeliness, as the right to seek the assistance of the Court to resolve it is not subjected to any time-limit by Article 60 of the Court's Statute.

9. The respondent State, while conceding that there is no such time-limit in Article 60, argues that an interpretation "goes back" to the text of the Judgment, whereas a request for provisional measures "relates to the future", there being "a tension between the two, which becomes ever more acute as time passes". The fact that both Thailand and Cambodia have seen it fit to address, each one in its own way, the issue of timeliness in the circumstances of the cas d'espèce, seemingly startled by it, renders the present case of the Temple of Preah Vihear, in Judge Cançado Trindade's view, "indeed fascinating", as it shows "the human face of an inter-State case before the World Court".

10. In his perception, the present case appears to contain some lessons, not so easy to grasp, in respect of "boundaries in space and in time", meant to "bring countries and their peoples together, rather than separate them". Judge Cançado Trindade ponders that "all cultures, including the ancient ones, in distinct latitudes, grasped the mystery of the passing of time, each one in its own way"; there is no social milieu wherein collective representations pertaining to its origin and to its destiny are not found. There is a spiritual legacy which is transmitted, with the passing of time, from generation to generation, conforming a "perfect spiritual continuity among generations"; hence the relevance of the conscience of living in time.

11. Judge Cançado Trindade adds that "the passing of time, — a source of desperation to some, — in fact brings the living ineluctably closer to their dead, and binds them together, and the preservation of the spiritual legacy of our predecessors constitutes a means whereby they can communicate themselves with the living, and vice-versa" (part VII). He then points out, as to the chiaroscuro of existence itself, the distinctions between chronological time and biological time, and between this latter and psychological time. The time of human beings first nourishes them with innocence and hope, and, later, with experience and memory; "time links the beginning and the end of human existence, rather than separates them".

12. He then turns attention to time, legal interpretation and the nature of legal obligation (part VIII). In this connection, he ponders that, in the long history of the law of nations, 50 years may appear a long, or not so long a time, depending on how we see them, and on "what period of that history we have in mind. All will depend on the density of time (.) of the period at issue, — whether at that period much has happened, or nothing significant has taken place at all". One cannot lose sight of the fact that time and space do not form part of the empirical or real world, — he adds, — but are rather part of our "mental constitution" to examine and understand events that have occurred or occur.

13. Judge Cançado Trindade recalls that, in so far as legal interpretation is concerned, in the present case, Cambodia and Thailand uphold the distinct theses of the existence of a continuing, or else an instantaneous obligation, respectively. In a request for provisional measures of protection like the one before the Court, pertaining to a situation which appears to abide by the prerequisites of urgency and gravity, and imminence of irreparable harm, the Court cannot simply decline to answer the points raised before it. In the cas d'espèce, concerning the domain of inter-State relations (between Cambodia and Thailand), when the fundamental principle of the prohibition of use or threat of force is at stake, as it is here, the corresponding obligation is, in his understanding, a continuing or permanent one (rather than an immediate or "instantaneous" one), for the States concerned.

14. Judge Cançado Trindade then addresses another aspect of the case, moving from his considerations on time and law to those pertaining to space and law. He focuses on "the human element of statehood: the population", which calls for taking territory and people together (part IX). He examines the two rounds of responses provided by Cambodia and Thailand, to a series of questions he put to both of them, at the end of the public sitting of the Court of 31 March 2011. His questions concerned the living conditions of the local population in the area of the Temple of Preah Vihear, as a result of the incidents occurred therein since 22 April 2011.

15. After pointing out that there are points of convergence as well as of difference in those respective responses, Judge Cançado Trindade finds that, while "the responses provide some clarification and the situation seems to have progressed in a positive manner, with regard to the safe and voluntary return of local inhabitants to their homes, the calm achieved remains fragile, and seems to be provisional". He warns that the ceasefire is only verbal, there being no assurances that the armed hostilities would not resume and that the population would not be displaced yet again. The ceasefire "seems to be temporary", and nothing indicates that the conflict would not break out again. Accordingly, in his view, the situation in the present case "requires the indication of Provisional Measures of Protection to prevent or avoid the further aggravation of the dispute or situation, given its current gravity, urgency, and the risks of irreparable harm".

16. He further observes, in this connection, that it has become almost commonplace today to evoke Provisional Measures of Protection to prevent or avoid the "aggravation" of the dispute or

situation at issue Yet, this sounds "almost tautological", given the fact that a dispute or situation which calls for Provisional Measures of Protection is already — per definitionem — endowed with gravity and urgency, given the probability or imminence of irreparable harm It would thus be more accurate, in his view, to evoke Provisional Measures of Protection to prevent or avoid the "further aggravation" of the dispute or situation at issue

17 His next set of considerations pertain to the effects of Provisional Measures of Protection in the cas d'espèce (part X) He ponders that "International Law in a way endeavours to be anticipatory in the regulation of social facts, so as to avoid disorder and chaos, as well as irreparable harm What is anticipatory is Law itself, and not the unwarranted recourse to force" This brings to the fore the raison d'être of Provisional Measures of Protection, to prevent and avoid irreparable harm in situations of gravity and urgency They are endowed with "a preventive character, being anticipatory in nature, looking forward in time", and disclosing the preventive dimension of the safeguard of rights

18 To Judge Cançado Trindade, further lessons can be extracted from the present decision of Court in the case of the Temple of Preah Vihear, also in respect of: (a) the protection of people in territory; (b) the prohibition of use or threat of force; (c) the protection of cultural and spiritual world heritage In his understanding, as to the first point, "there is epistemologically no impossibility or inadequacy for provisional measures, of the kind of the ones indicated in the present Order, not to extend protection also to human life, and to cultural and spiritual world heritage" Quite on the contrary, in his perception, "the reassuring effects of the provisional measures indicated in the present Order are that they do extend protection not only to the territorial zone at issue, but also, by asserting the prohibition of the use or threat of force — pursuant to a fundamental principle of international law ( ), — to the life and personal integrity of human beings who live or happen to be in that zone or near it, as well as to the Temple of Preah Vihear itself, situated in the aforementioned zone, and all that the Temple represents"

19 To him, due attention is given by the Court to compliance with the fundamental principles of international law, as enshrined into the U N Charter (Article 2) and reckoned in general international law, in particular that of the prohibition of use or threat of force (Article 2 (4)), in addition to that of the peaceful settlement of disputes (Article 2 (3)) Furthermore, Judge Cançado Trindade devotes special attention to the acknowledgement of the "universal value" of the Temple of Preah Vihear, inscribed by the World Heritage Committee as a UNESCO World Heritage Site on 07.07 2008, pursuant to the relevant provisions of the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage Provisional Measures indicated by the Court are thus here extending protection also to cultural and spiritual world heritage

20 In his view, although the Court has taken the right decision in this respect, establishing, to that end, a "provisional demilitarized zone, in the vicinity of the Temple of Preah Vihear", it has done so pursuant to a traditional outlook and to a "reductionist reasoning", attentive "essentially to territory, although the case lodged with it goes well beyond it" To him, beyond the strict territorialist approach, one has to take into account "people and territory together", expressly, for the purpose of protection (part XI) In his view, the Court should be prepared, in our days, to give proper weight to the human factor

21 Judge Cançado Trindade adds that, if one further takes into account also the protection of cultural and spiritual world heritage, for the purposes of Provisional Measures, the resulting picture appears "even more complex, and the strict territorialist approach even more unsatisfactory" It

shows how multifaceted, in these circumstances, the protection provided by Provisional Measures can be, going well beyond State territorial sovereignty, and bringing territory, people and human values together

22. Judge Cançado Trindade's final considerations are presented "sub specie aeternitatis", in addressing in particular the protection of the spiritual needs of human beings" (part XII). Parallel to material and moral damages, he sustains the existence of "spiritual damages", and parallel to damage to the "project of life", he advances the conceptualization of damage to the "project of after-life". He regrets the incidents recently occurred in the area the Temple of Preah Vihear, a masterpiece of Khmer art and architecture built in the first half of the XIth century so as to assist in fulfilling the religious needs of human beings

23. Recalling the importance and the conceptual origins of religions, and the encounters among them and among cultures, he points out that the relationship, in its distinct aspects, between religions and the law of nations (le droit des gens) itself, has been the object of constant attention throughout the last nine decades; the interest on the matter has remained alive lately. In Judge Cançado Trindade's perception, "cultural and spiritual heritage appears more closely related to a human context, rather than to the traditional State-centric context; it appears to transcend the purely inter-State dimension, that the Court is used to".

24. To him, "beyond the States are the human beings who organize themselves socially and compose them. The State is not, and has never been, conceived as an end in itself, but rather as a means to regulate and improve the living conditions of the societas gentium, keeping in mind the basic principle of humanity, amongst other fundamental principles of the law of nations, so as to achieve the common good. Beyond the States, the ultimate titulaires of the right to the safeguard and preservation of their cultural and spiritual heritage are the collectivities of human beings concerned, or else humankind as a whole", ponders Judge Cançado Trindade.

25. To him, it can be inferred from the present case of the Temple of Preah Vihear that "we are here in the domain of superior human values, the protection of which is not unknown to the law of nations, although not sufficiently worked upon in international case law and doctrine to date". The present Order of the Court is directly related to the Court's Judgment of 15 June 1962, of half a century ago, in the case of the Temple of Preah Vihear, wherein the ICJ expressly stated, in its dispositif (para. 2), that "Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory". He observes that the Temple remains the reference to "its vicinity" (from Latin vicinitas), and the provisional demilitarized zone set up by the present Order of the Court covers the territory neighbouring (vicinus to) the Temple.

26. Judge Cançado Trindade concludes, for the issue of the supervision of compliance by the States concerned with the present Order, that this latter encompasses, to the effect of protection, the people living in the said zone and its surroundings, the Temple of Preah Vihear itself, and all that it represents, all that comes with it from time immemorial, nowadays regarded by UNESCO as part of the cultural and spiritual world heritage. He adds that "cultures, like human beings, are vulnerable, and need protection. The universality of international law is erected upon respect for cultural diversity". He finds it reassuring that, for the first time in the history of this Court, Provisional Measures of Protection indicated by it are, as he perceives them, "so meaningfully endowed with a scope of this kind"; to him, this is "well in keeping with the jus gentium of our times".

Dissenting opinion of Judge Xue

Judge Xue is in agreement with the Court's decision to indicate provisional measures but has reservation to operative paragraph 69 (B) (1) of the Order, which defines a provisional demilitarized zone (the PDZ). In her view, such measure is excessive and puts into question the proper exercise of the judicial discretion of the Court in indicating provisional measures.

Judge Xue notes that in all the cases that either directly involve territorial disputes or bear territorial implications, the Court, in indicating provisional measures, has invariably confined such measures to the disputed territories and never gone beyond such areas. While acknowledging the power of the Court to indicate provisional measures independently of the requests submitted by the Parties when circumstances so require, she is concerned that the Court has liberally exercised its judicial discretionary power in identifying the co-ordinates of the PDZ and extending the provisional measures into territories that is not in dispute between the Parties. Along this line, Judge Xue expresses her regret that the Court fails to give sufficient reasons for the adoption of the PDZ as one of the provisional measures, especially why factual circumstances require such an extraordinary measure to be taken. She is particularly concerned that given the lack of adequate knowledge of the ground situation in the area, defining a PDZ on a flat map could give rise to unpredictable difficulties in reality to the detriment of the legitimate interests of the Parties.

In the view of Judge Xue, it would have been sufficient for the Court just to order the Parties to refrain from any military activities "in the area of the Temple", a term repeatedly used by both Parties, in order to preserve the rights of either Party in the main proceedings. Otherwise, the Court could have followed the practice in the case concerning Frontier Dispute (Burkina Faso/Mali) by ordering the Parties, with the co-operation of the Association of Southeast Asian Nations, to determine first by themselves the positions to which their armed forces should be withdrawn. Failing such agreement, the Court could then draw such lines by means of an Order.

Lastly, Judge Xue observes that the Court has so far followed the jurisprudence that in indicating provisional measures, there must be a link between the rights which form the subject of the main proceedings on the merits and the measures requested. The provisional measures as thus indicated should logically relate to the rights concerned in the main proceedings. The PDZ as indicated in the operative paragraph 69 (B) (1) fails to maintain this necessary link within reasonable bounds.

Dissenting opinion of Judge Donoghue

Judge Donoghue filed a dissenting opinion. She agrees with the Court that the case should not be removed from the General List. She dissents, however, as to the provisional measures imposed by the Court. In her view, it is doubtful that the Statute of the Court contemplates the imposition of provisional measures in an interpretation proceeding in which the sole basis of jurisdiction is Article 60 of the Statute of the Court. Even assuming that such jurisdiction exists, Judge Donoghue considers that the particular measures imposed today exceed its bounds. She notes in particular that those measures extend to areas that are not the subject of the dispute over interpretation. She also concludes that today's Order stretches the limits of Article 60 further than did the order in the one interpretation case in which the Court has previously indicated provisional measures (Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America)) and is also far-reaching in comparison to provisional measures orders in past conflicts over border areas. Because Article 60 jurisdiction appears to persist indefinitely and without a means for States to withdraw from it, Judge Donoghue expresses the concern that the Order today could deter States from consenting to the jurisdiction of the Court, because it may undermine their confidence that any limits on such jurisdiction will be respected.

Declaration of Judge ad hoc Guillaume

Judge ad hoc Guillaume shares the Court's view that the necessary conditions for the indication of provisional measures have been fulfilled in the present case. In this connection, he observes that the Court has jurisdiction to entertain both the dispute between the Parties concerning the interpretation of the second paragraph of the operative part of the 1962 Judgment and the dispute as to the force of res judicata of the Judgment's reasoning in respect of the course of the boundary between the two States.

He sets out his reasons for supporting the creation of a relatively large demilitarized zone and recalls the guarantees given by the Court to Cambodia regarding the Temple itself: the reaffirmation of Cambodia's sovereignty; the obligation for Thailand not to obstruct Cambodia's free access to the Temple; and the possibility of stationing in the Temple any police personnel necessary for the security of persons and property.

Dissenting opinion of Judge ad hoc Cot

In his dissenting opinion, Judge ad hoc Jean-Pierre Cot observes that it is exceptional for the Court to indicate provisional measures in connection with a request for interpretation. The only precedent, in the Avena case (Order of 16 July 2008), is in no way comparable. The present case concerns a judgment which is fifty years old and has been applied for decades without any problems. However, the provisional measures limit the exercise of the States' territorial sovereignty. Judge ad hoc Cot draws attention to the risk of abuse of process in such circumstances. The applicant may attempt to graft a new case — proceedings for revision or non-compliance in relation to a previous decision — on to the request for interpretation. The basic requirement for the consent of the parties to the case would thus be circumvented.

Judge ad hoc Cot further considers that the main provisional measure indicated by the Court — the establishment of a temporary demilitarized zone — is ill-advised. The Parties have provided no details of topographical or strategic data in the case. In these circumstances, the defining of a temporary demilitarized zone is the product of "armchair strategy" and results in provisional measures being indicated which may be inapplicable on the ground. Judge ad hoc Cot would have preferred the Court to have based itself on the precedent in the case concerning the Frontier Dispute (Burkina Faso/Republic of Mali). The Chamber of the Court, in its wisdom, noted the lack of data enabling it to indicate a disarmament measure and limited its indication of provisional measures to support for the efforts of the regional organization concerned, in this case the Indonesian Chair of ASEAN.